

REMARKS**Rejections under 35 U.S.C. § 102(b)**

On page 2 of the present Office Action, Claims 4-12, 16-17, 23-24, and 30-36 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Sharma et al.* (U.S. Patent No. 6,069,871 – “*Sharma*”). After careful consideration of Examiners remarks, Applicant has cancelled the claims addressed by the rejection under § 102(b).

Rejections under 35 U.S.C. § 103(a)

On page 13 of the present Office Action, Claims 1-3, 13-15, and 25-29 are rejected over *Sharma et al.* (U.S. Patent No. 6,069,871 – “*Sharma*”) and further in view of *George* (U.S. Patent No. 5,214,789). After careful consideration of Examiner’s remarks, Applicant respectfully submits that Claims 1-3, 13-15, and 25-29 are not rendered unpatentable under *Sharma* and further in view of *George* and respectfully traverses Examiner’s rejection in view of the arguments submitted herein.

As an initial matter, Applicant believes that the combination of *Sharma* and *George* does not render the present invention unpatentable because that combination is improper. “Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.” MPEP 2143.01 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). A reference may not be modified if the “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose. MPEP 2143.01 (citing *In re Gordon et al.*, 733 F.2d 900, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984)).

In the present case, *Sharma* discloses in the Related Art section that in a CDMA system, call load may be “concentrated in a small geographic area, even with the addition of cells, particular cells may remain overloaded while neighboring cells are lightly loaded” (col. 1, lines

57-60). The inventors in *Sharma* saw a need for a system for "allocating load amongst multiple carrier frequencies in a multiple carrier frequency system and in balancing load in the multiple carrier frequency system" (col. 2, lines 11-14). Therefore, *Sharma*, when considered as a whole, teaches a system and method where mobile units are assigned to base stations based upon available base station capacities, regardless of the relative location of the base station and mobile unit (col. 2, lines 17-40).

In contrast, *George* indicates that "it is highly desirable, as soon as possible, to transfer communication back to the station that directly supports the zone in which the mobile radio and its user group are located" (col. 7, lines 38-41). The purpose of *George*, when considered as a whole, is to allocate channels to mobile radios only in the restricted or adjacent zones to eliminate excess channel allocations and utilization of interconnection network trunks (abstract).

The combination of *Sharma* with *George* is improper because *Sharma*'s load balancing scheme, which prevents the overloading of cells located in high call-volume areas would be rendered unsatisfactory for its intended purpose if modified by *George*'s teaching of transferring mobile unit communication back to the station that directly (defined as a function of geographic location, col 2, lines 6-17) supports the zone in which the mobile unit is located.

For example, if a mobile unit initiates a call in a high call-volume area (e.g., a metropolitan area), the invention disclosed in *Sharma* would send the communication to a lightly-loaded station, which presumably, would be located outside of the high call-volume area. The invention disclosed in *George* would determine by the mobile unit's geographic location to which station the mobile unit should be assigned. If the mobile unit is within a certain zone (e.g., presumably one that supports high-call volume), the system and method in *George* would attempt to transfer the communication back to the station that directly supports the zone. By making this transfer, the balance achieved by *Sharma* would be undermined and the station that directly services the high-volume area would remain heavily loaded. Thus, modifying *Sharma* with *George* as suggested by the Examiner would render *Sharma* unsatisfactory for its intended purpose of load balancing.

Secondly, on page 14 of the present Office Action, the Examiner asserts that *George* discloses a system and method for allocating radio frequency channels based on position or location. Even if the combination of *Sharma* and *George* were proper, the present invention would not result if the combination was made by a person having ordinary skill in the art who did not have access to Applicant's specification.

In the present case, *Sharma* discloses in the Related Art section that in a CDMA system, call load may be "concentrated in a small geographic area, even with the addition of cells, particular cells may remain overloaded while neighboring cells are lightly loaded" (col. 1, lines 57-60). The inventors in *Sharma* saw a need for a system for "allocating load amongst multiple carrier frequencies in a multiple carrier frequency system and in balancing load in the multiple carrier frequency system" (col. 2, lines 11-14). Therefore, *Sharma*, when considered as a whole, teaches a system and method where mobile units are assigned to base stations based upon available base station capacities, regardless of the relative location of the base station and mobile unit (col. 2, lines 17-40).

In contrast, *George* indicates that "it is highly desirable, as soon as possible, to transfer communication back to the station that directly supports the zone in which the mobile radio and its user group are located" (col. 7, lines 38-41). The purpose of *George*, when considered as a whole, is to allocate channels to mobile radios only in the restricted or adjacent zones to eliminate excess channel allocations and utilization of interconnection network trunks (abstract).

The present invention would not result from the combination of *Sharma* with *George* by a person having ordinary skill in the art without access to Applicant's specification because *Sharma*'s load balancing scheme, which prevents the overloading of cells located in high call-volume areas, conflicts with *George*'s teaching of transferring mobile unit communication back to the station that directly (defined as a function of geographic location, col 2, lines 6-17) supports the zone in which the mobile unit is located.

For example, if a mobile unit initiates a call in a high call-volume area (e.g., a metropolitan area), the invention disclosed in *Sharma* would send the communication to a

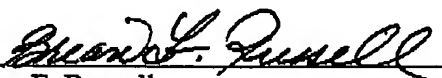
lightly-loaded station, which presumably, would be located outside of the high call-volume area. The invention disclosed in *George* would determine by the mobile unit's geographic location to which station the mobile unit should be assigned. If the mobile unit is within a certain zone (e.g., presumably one that supports high-call volume), the system and method in *George* would attempt to transfer the communication back to the station that directly supports the zone. By making this transfer, the balance achieved by *Sharma* would be undermined and the station that directly services the high-volume area would remain heavily loaded. The modification of *Sharma* with *George* as suggested by the Examiner would render *Sharma* unsatisfactory for its intended purpose of load balancing. Thus, the present invention would not result from a combination of the references as suggested by the Examiner by a person having ordinary skill in the art without access to Applicant's specification.

Therefore, the combination of *Sharma* and *George* is improper, and even if the combination is proper, the present invention would not result from the combination of the references as suggested by the Examiner by a person having ordinary skill in the art without reference to Applicant's specification. Furthermore, Applicant believes that the arguments pertaining to independent Claim 1 also apply to independent Claims 13, 25, and 28. Therefore, pending Claims 1, 13, 25, 28, and all dependent claims are thus not rendered unpatentable in view of the cited references.

No extension of time is believed to be required. However, in the event that an extension of time is required, please charge that extension fee and any other required fees to Deposit Account Number 50-3083.

Applicant respectfully requests the Examiner contact the undersigned attorney of record at (512) 343-6116 if such would further or expedite the prosecution of the present Application.

Respectfully submitted,


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